UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

PAULA STEINER,

Plaintiff,

v.

HARTFORD LIFE AND ACCIDENT INSURANCE, ET AL.,

Defendants.
_____/

No. C 03-3160 MJJ (JL)

E FILING

ORDER DENYING PLAINTIFF'S MOTION TO COMPEL ADDITIONAL DISCOVERY
Docket # 24

Before the Court is Plaintiff's Motion to Compel Additional Discovery. Attorney for Plaintiff is Michael S. Henderson, TEAL & MONTGOMERY. Attorney for Defendants is David J. Weinman, GALTON & HELM, LLP. Both attorneys requested telephonic appearances. This Court considered the moving and opposing papers and found the matter suitable for submission without oral argument. The matter having been fully considered and good cause appearing, it is hereby ordered that the motion is denied.

Factual and Procedural Background

All discovery in this case has been referred by the district court (Hon. Martin J. Jenkins) as provided by 28 U.S.C. §636(b). The motion was submitted without oral argument as provided by Civil Local Rule 7-6.

Plaintiff Paula Steiner filed a long-term disability ("LTD") claim for back pain under her group disability insurance plan at work. Defendant Hartford paid benefits on the claim.

After surveillance and a review by an independent medical examiner, Hartford discontinued benefit payments. Steiner filed an administrative appeal. Hartford retained another independent medical evaluator to analyze the medical records and upheld its decision.

On July 8, 2003, Steiner filed her complaint in this court, against her employer, Old Republic Title Co. In Santa Rosa, Group LTD Plan (the disability plan for Old Republic employees), and Hartford Insurance, as the plan administrator. Hartford is a corporation incorporated and having its principal place of business in Connecticut. This Court has original jurisdiction under the Employee Retirement Income Security Act ("ERISA"), 29 U.S.C. §1001 et seq.

At paragraph 18 of her complaint, Steiner alleges: "Defendants have wrongfully, arbitrarily and capriciously terminated Steiner's LTD benefits. Defendants' decision is without legal or factual justification, and is a breach of defendants' fiduciary obligations under the Plan. By refusing to pay Steiner's LTD benefits to which she is entitled under the Plan, defendants have violated their responsibilities and obligations under the plan. Steiner asks the court to award her past, present and future benefits under the Plan, pre and post-judgment interest, consequential damages recoverable under ERISA and attorney's fees and costs."

Defendants answered, contending that they had paid Steiner benefits, reviewed her claim and properly discontinued paying benefits because she was no longer disabled.

Steiner served discovery on Defendants seeking:

1. Each employee/consultant's curriculum vitae;

2. All contracts or agreements between Hartford and each employee/consultant;

3. Information concerning the amount of business Hartford conducted with these employees/consultants during the period 1997 to the present;

4. All compensation paid to these employees/consultants by Hartford for their work on Steiner's case, and at any time from 1997 to the present.

In addition, Steiner asked Hartford to produce documents addressing its claims handling practices with respect to long term disability claims.

Hartford refused to provide any of this discovery, contending that, in an ERISA case, the court's review is limited to the administrative record. In a few instances when courts have permitted discovery outside that record, it has been for the purpose of justifying a shift to a heightened standard of review, from abuse of discretion to de novo review. Hartford has already stipulated that de novo review is appropriate in this case, so extra-record discovery is not necessary.

Analysis

Discovery outside the administrative record under the de novo standard of review is limited to unusual cases.

Steiner contends that she needs certain discovery to show a potential conflict of interest because the insurance company defendant is also the administrator of the ERISA plan. Under the circumstances of this case, this alone is not sufficient justification for taking discovery outside the administrative record. Plaintiffs typically use this discovery as evidence of a potential conflict in order to shift the standard of review from abuse of discretion to de novo. Parties in this case have already stipulated to a de novo standard of review. Therefore no discovery is justified to shift the standard from abuse of discretion to de novo: it already shifted.

As the Ninth Circuit previously ruled in another ERISA case: " Because we hold that de novo review applies, we need not address Grosz-Salomon's contention that she should have been allowed further discovery to show a conflict of interest, since the point of showing a conflict of interest is to obtain a more demanding standard of review than abuse of discretion." *Grosz-Salomon v. Paul Revere Life Ins. Co.* 237 F.3d 1154, 1162, fn 34 (9th Cir. 2001)

Steiner cites several Ninth Circuit cases for the proposition that the court is not limited to the administrative record when determining whether an actual conflict of interest has tainted the benefit decision. See, e.g., *Tremain v. Bell Industries*, 196 F.3d 970 (9th Cir.1999). However, these cases are merely persuasive, and are not binding.

The Ninth Circuit has previously ruled that discovery outside the record may be taken, but the justifying circumstance was that the plan administrator had misinterpreted the plan. *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F.3d 938, 943-44 (9th Cir.1995) (allowing the use of extra evidence where the plan administrator incorrectly interpreted the plan - - "We emphasize that a district court should not take additional evidence merely because someone at a later time comes up with new evidence that was not presented to the plan administrator. However, where the original hearing was conducted under a misconception of the law; that is, the meaning of "mental illness" or "functional nervous disorder," it is necessary for the case to be reevaluated in light of the proper legal definitions. ")

Steiner seeks discovery outside the administrative record, specifically to find out if Hartford has a conflict of interest as both the payor and the administrator, and also whether Hartford's physician-consultants are biased due to their relationship with Hartford. In addition, she seeks to discover whether Hartford violated its own claims-handling policies as described in its claims manuals.

This Court finds that Steiner fails to show that this the kind of unusual case which would require unusual discovery.

Fact that Administrator is payor does not alone justify extra-record discovery.

The Tenth Circuit in the *Hall* case did a comprehensive review of the law in other circuits regarding discovery in ERISA cases subject to de novo review. The court concluded that the mere fact that the payor was also the administrator was not enough by itself to justify discovery outside the administrative record:

"But that does not mean, in the context of deciding whether to admit additional evidence for de novo review cases, we should automatically allow the admission of additional evidence by the district court simply because the administrator and payor are the same party. The administrator and the payor are often the same party for many ERISA benefit plans. If we were to adopt a blanket rule that the admission of additional evidence should be allowed whenever the same party is the administrator and payor, then it will not be the unusual case in which additional evidence is admitted. It would be commonplace.

"Similarly, in the context of admitting additional evidence based on a possible conflict of interest, evidence should only be admitted to the extent that the party seeking its admission can show that it is relevant to the conflict of interest and that the conflict of interest in fact requires the admission of the evidence. That way the district court can calibrate the admission of additional evidence to the amount of conflict of interest that actually existed and to the manner in which that conflict tainted the decisionmaking process of the administrator." *Hall v. Unum Life Ins. Co. of America* 300 F.3d 1197,1205 -1206 (10th Cir.2002).

The Fourth Circuit, in *Quesinberry,* a case on which the court in *Hall* relied, also allowed discovery outside the administrative record, but only in exceptional circumstances, and by implication, only when the administrative record was so "meager" that the court needed additional evidence to make its decision.

The court noted that some cases come to district courts with meager records. Accordingly, courts should look beyond the original record when additional evidence is "necessary for resolution of the benefit claim." The court went on to give specific examples of the types of "exceptional circumstances" that may warrant an exercise of the court's discretion to allow additional evidence:

"Among the exceptional circumstances are the following: (1) claims that require consideration of complex medical questions or issues regarding the credibility of medical experts; (2) the availability of very limited administrative review procedures with little or no evidentiary record; (3) the necessity of evidence regarding interpretation of the terms of the plan rather than specific historical facts; (4) instances where the payor and the administrator

are the same entity *and the court is concerned about impartiality*; (5) claims which would have been insurance contract claims prior to ERISA; and (6) circumstances in which there is additional evidence that the claimant could not have presented in the administrative process. *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1021-27 (4th Cir.1993) (Emphasis added)

The court in *Hall* remarked that most circuits have adopted rules allowing the admission of additional evidence in de novo cases in limited circumstances. *See, e.g., DeFelice v. Am. Int'l Life Assurance Co. of N.Y.*, 112 F.3d 61, 65-67 (2d Cir.1997) (allowing the use of extra evidence if the plan administrator has a conflict of interest); *Mongeluzo v. Baxter Travenol Long Term Disability Benefit Plan*, 46 F.3d 938, 943-44 (9th Cir.1995) (allowing the use of extra evidence where the plan administrator incorrectly interpreted the plan); *Casey v. Uddeholm Corp*., 32 F.3d 1094, 1098-99 (7th Cir.1994) (allowing a district court to consider additional evidence where the plan administrator has made no factfinding himself); *S. Farm Bureau Life Ins. Co. v. Moore*, 993 F.2d 98, 101-02 (5th Cir.1993) (allowing the admission of extra evidence with regards to plan interpretation by the administrator, but not with regards to the finding of historical facts by the administrator); *Donatelli v. Home Ins. Co.*, 992 F.2d 763, 765 (8th Cir.1993) (leaving the question of whether to admit extra evidence to the discretion of the district court where there is "good cause" to admit additional information in order to provide "adequate" review); *Quesinberry v. Life Ins. Co. of N. Am.*, 987 F.2d 1017, 1021-27 (4th Cir.1993) (en banc) (leaving the question of whether to admit extra evidence to the discretion of the district court when it finds that exceptional circumstances have been met and listing some of those circumstances); *Luby v. Teamsters Health, Welfare & Pension Trust Funds*, 944 F.2d 1176, 1184-85 (3d Cir.1991) (stating that the decision to admit additional evidence is within the district court's discretion and was permissible in this case because there was no evidentiary record). *Hall,* 300 F.3d at 1201 - 1202.

Again and again, courts have cautioned that such discovery is the exception, not the

rule: “We emphasize that it is the unusual case in which the district court should allow supplementation of the record.” *See Quesinberry*, 987 F.2d at 1025. ("In most cases, where additional evidence is not necessary for adequate review of the benefits decision, the district court should only look at the evidence that was before the plan administrator or trustee at the time of the determination."). The party seeking to supplement the record bears the burden of establishing why the district court should exercise its discretion to admit particular evidence by showing how that evidence is necessary to the district court's de novo review.

However, district courts are not required to admit additional evidence even when these circumstances exist because a court "may well conclude that the case can be properly resolved on the administrative record without the need to put the parties to additional delay and expense." *Id.* The list is not exhaustive; it is "merely a guide for district courts faced with motions to introduce evidence not presented to the plan administrator." *Id.* In considering any such motion, the district court will also need to "address why the evidence proffered was not submitted to the plan administrator," *Id.*, and should only admit the additional evidence if the party seeking to introduce it can demonstrate that it could not have been submitted to the plan administrator at the time the challenged decision was made. See, e.g., *Davidson v. Prudential Ins. Co. of Am.*, 953 F.2d 1093, 1095 (8th Cir.1992) (holding that the district court did not err in refusing to admit extra-record evidence because the additional evidence "was known or should have been known to [plaintiff] during the administrative proceedings").

Conversely, "[i]f the administrative proceedings do not allow for or permit the introduction of the evidence, then its admission may be warranted." *Quesinberry*, 987 F.2d at 1027. Cumulative or repetitive evidence, or evidence that "is simply better evidence than the claimant mustered for the claim review" should not be admitted. *Id.*

Conclusion and Order

Controlling Ninth Circuit law and persuasive decisions from other Circuits require that a party seeking to take discovery outside the administrative record in an ERISA case subject to de novo review meet the burden of showing justification. The overarching concern is that the trial court needs the additional information to make its decision and that the administrative record is skewed either by a misconception of law or misconstruction of the plan terms on the

part of the plan administrator, or is otherwise seriously deficient. Finally, the trial court may be concerned about the adequacy of the record due to evidence of bias on the part of the plan administrator, beyond the mere fact that the administrator is also the payor.

Paula Steiner, plaintiff in the case at bar, has not shown that the plan administrator mistakenly interpreted the terms of the plan to justify extra-record discovery under the controlling Ninth Circuit law. *Mongeluzo*, 46 F.3d 938, 943-44. Nor has Steiner shown evidence of the kinds of exceptional circumstances which would justify discovering evidence outside the administrative record under Fourth Circuit law, which is persuasive but not controlling. *Quesinberry*, 987 F.2d 1027. The Tenth Circuit reiterates that it is only in an unusual case that a court should rule in favor of the party seeking discovery outside the administrative record in an ERISA case, and only after that party demonstrates that the court needs this information to make its decision. *Hall*, 300 F.3d 1197, citing *Quesinberry, Id.*

Steiner proffers no exceptional circumstances to justify extra-record discovery. Her case is a fairly uncomplicated disability claim for back pain. There is no indication of any departure from normal claims handling practices or lack of an adequate record.

Steiner also offers no evidence that the plan administrator misinterpreted the terms of the plan, that her case is unusual, that its circumstances are exceptional, that there is any evidence of a conflict of interest beyond the mere fact that the administrator and the payor are the same, or that the record is so meager or distorted that the district court cannot make an informal decision based on it.

In sum, Steiner cannot credibly claim that the administrative record is insufficient for the trial court to make its decision and therefore, for all the reasons stated above, Steiner's motion to compel additional discovery is denied.

IT IS SO ORDERED.

DATED: June 4, 2004

/s/ James Larson

JAMES LARSON
United States Magistrate Judge